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[Additional counsel identified on signature page in accordance with Local Rule 3-4(a)(1)]

Attorneys for Plaintiff Federal Trade Commission

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**FEDERAL TRADE COMMISSION,**

Plaintiff,

v.

**MICROSOFT CORP.**

and

**ACTIVISION BLIZZARD, INC.,**

Defendants.

Case No. 3:23-cv-2880

**PLAINTIFF FEDERAL TRADE  
COMMISSION'S ADMINISTRATIVE  
MOTION TO CONSIDER WHETHER  
ANOTHER PARTY'S MATERIAL  
SHOULD BE SEALED**

PLAINTIFF FEDERAL TRADE COMMISSION'S ADMINISTRATIVE MOTION TO CONSIDER WHETHER  
ANOTHER PARTY'S MATERIAL SHOULD BE SEALED  
CASE NO. 3:23-cv-2880

Pursuant to Civil Local Rules 7-11 and 79-5(f), Plaintiff, the Federal Trade Commission, respectfully submits this Administrative Motion to Consider Whether Another Party's Material Should be Sealed in connection with Plaintiff Federal Trade Commission's Bench Brief Regarding Defendants' Proffered Testimony Regarding Microsoft's Agreements ("Bench Brief").

Certain portions of Plaintiff's Bench Brief contain information that was obtained during the course of litigation discovery in *In the matter of Microsoft Corp. and Activision, Blizzard, Inc.*, before the United States of America Federal Trade Commission Office of Administrative Law Judges, Docket No. 9412, and that the producing party designated as Confidential pursuant to the Protective Order Governing Confidential Material entered on December 9, 2022 ("Administrative Protective Order"). As detailed below, Microsoft and Nintendo have filed confidentiality declarations in support of sealing as required by Local Rule 79-5. Accordingly, Plaintiff seeks to file under seal:

Document	Portions to Be Filed Under Seal	Designating Party
Plaintiff's Bench Brief	Page 1, lines 26-27	Nintendo
Plaintiff's Bench Brief	Page 2, line 8-19	Microsoft
Plaintiff's Bench Brief	Page 2, line 21-26	Nintendo
Plaintiff's Bench Brief	Page 2, line 27	Microsoft
Plaintiff's Bench Brief	Page 3, line 1-14	Microsoft
Plaintiff's Bench Brief	Page 3, line 26-27	Microsoft

Materials and documents may be provisionally filed under seal pursuant to Civil Local Rule 79-5(f) when the document, or portions thereof, "has been designated as confidential by another party or non-party." L.R. 79-5(f).

Plaintiff has redacted the above-referenced yellow-highlighted portions of its Bench Brief because Microsoft has designated the information contained therein as confidential pursuant to

1 L.R. 79-5(f). *See* Microsoft's Administrative Motion Seeking *In Camera* Treatment of Certain  
 2 Exhibits Pursuant to Civil L.R. 7-11 and 79-5 (Dkt. No. 150).

3 Plaintiff has redacted the above-referenced pink-highlighted portions of Plaintiff's  
 4 Findings of Fact because Nintendo has designated the information contained therein as  
 5 confidential pursuant to L.R. 79-5(f). *See* Non-Party Nintendo of America Inc. Statement  
 6 Pursuant to Local Rule 79-5 As To Why Its Confidential Information Should Be Filed Under  
 7 Seal (Dkt. No. 168); *see also* Non-Party Nintendo of America Inc. Unopposed Motion for Order  
 8 Changing Time (Dkt. No. 136).  
 9

10 Plaintiff takes no position on the merits of sealing Microsoft's and Nintendo's designated  
 11 material.

12 In compliance with Civil Local Rule 79-5(d), redacted and unredacted versions of  
 13 Plaintiff's Reply accompany this Administrative Motion. In accordance with Local Rule 7-11,  
 14 Plaintiff has also filed a Proposed Order herewith.  
 15

16 Date: June 22, 2023

Respectfully Submitted,

17 /s/ James H. Weingarten

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